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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,257	01/09/2001	David Vardi	P/1318-117	6554
2352	7590	12/15/2003	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			WEST, JEFFREY R	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/757,257

Applicant(s)

VARDI ET AL.

Examiner

Jeffrey R. West

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-8, 11, 13, 15, 16-22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,590,056 to Barritz in view of U.S. Patent No. 5,671,412 to Christiano and further in view of Wong, "Oracle's new pricing targets Net users".

Barritz discloses a method, apparatus, and corresponding system for monitoring, tracking, and controlling the use of software products over time by implementing a surveying program, a monitoring program, a reporting program, and a knowledge base (column 4, lines 35-43) wherein the monitoring program and software product under analysis are executed concurrently but as separate software programs (column 7, lines 9-12) and the knowledge base, supplemented by user inputted information (column 11, lines 16-25) and containing information on the software module records, product records, and vendor records (column 5, lines 35-65), is stored in a separate physical storage device than the other information logs (column 6, lines 5-9).

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Barritz further discloses that the monitoring program repetitively/continuously (column 9, lines 13-15 and column 10, lines 55-56) extracts information about the software usage based on user supplied specifications such as types of modules, locations of modules, or specific products, events, or periods of time (column 10, lines 45-49) and once the monitoring program has run for a sufficient period of time, the information is stored and processed in the information storage log according to user-requests or specified formats (column 10, lines 7-27), with associated time stamping (column 10, lines 28-33), for the end result of generating a plurality of usage reports (column 8, lines 43-63). Barritz discloses that the reporting program sorts, correlates, consolidates, summarizes, formats, and outputs reports (column 8, lines 36-42) as well as performs any necessary filtering (column 8, line 64 to column 9, line 11). Barritz then discloses that the output reports, indicating results of substantially all of the software produce on the computer (column 8, lines 49-58), may be displayed to the user by the surveying program itself, or sent to another computing program for further manipulation and display (column 9, lines 34-47).

As noted above, Barritz teaches several methods and criteria for obtaining data relating to software usage as well as storing vendor based information in a knowledge base, however, Barritz does not include using the same methods and criteria to dynamically obtain computer capacity data for normalizing the corresponding software usage data.

Christiano teaches a software license management system for managing the usage of software products (column 1, lines 5-7) by determining the execution of the

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software (column 6, lines 43-52) and a providing a metering function that determines the amount of time, and the number of times, that the user activates the software to insure compliance with license agreements (column 7, lines 20-30). Christiano also teaches determining the vendor and version information about the component using the software, when requesting usage of the software (column 9, lines 9-20), and, during software usage, providing the stored vendor information to determine the amount of usage remaining on the license based on an obtained environmental resource capacity index number, that is developed through use of a license manager server (column 4, lines 39-44) and based on a particular computer system's processor (column 16, lines 56-65). Christiano then teaches using the environmental resource capacity number to combine the corresponding usage information with the capacity data to form raw, normalized software data to account for difference in the hardware speed (column 16, line 52 to column 17, line 15), such as the speed of the processor (column 4, lines 9-11), or other time-variant capacity data (i.e. disk drive space or memory space) (column 17, lines 6-9).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz to include obtaining computer capacity data for normalizing the corresponding software usage data, as taught by Christiano, because, as suggested by Christiano, the combination would have fairly adjusted the software usage data to account for actual usage differences caused by platform specifications (column 2, lines 58-65).

Furthermore, although the invention of Barritz and Christiano doesn't specifically disclose restating the results of the software usage data based on the variations over time of the computer capacity data, since Barritz discloses the second software including a reporting program that sorts, correlates, consolidates, summarizes, formats, and outputs usage reports (column 8, lines 36-42) and the invention of Christiano teaches combining usage information with the capacity data to form raw, normalized software data to account for difference in the hardware speed (column 16, line 52 to column 17, line 15), it would have been obvious to one having ordinary skill in the art to feedback the combined data into the reporting program of the second software to form a new report (i.e. restate) in order to insure accurate, updated, results in the corrected usage report.

As noted above, the invention of Barritz and Christiano teaches many of the features of the claimed invention, and while the combination teaches determining a capacity index of the computer based on parameters such as processor speed, disk drive space, or memory space, the combination does not specifically indicate determining the computer capacity dynamically over time.

Wong teaches software for implementing a new pricing model based upon processor power, or MIPS, (page 1, paragraph 5) wherein the software determines when the computer capacity changes (i.e. dynamic computer capacity) and adjusts a corresponding usage profile accordingly (page 1, paragraphs 5-6).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz and Christiano to include specifying the determination of the

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computer capacity dynamically over time, as taught by Wong, because, as suggested by Wong, the combination would have provided a more accurate way to gauge usage while continuously monitoring changes in computer capacity to fairly represent the usage over time (page 1, paragraphs 5, 6, and 8 and page 2, paragraph 1).

With respect to claims 11 and 17 invention of Barritz, Christiano, Wong, teaches determine computer capacity index (Christiano, column 17, lines 9-12) based upon system processing power and MIPS (Wong, page 1, paragraphs 5, 6, and 8) and the Examiner takes Official Notice that a system's total processing capability (i.e. processing power) is based upon the number of processors (see for example, U.S. Patent No. 6,496,823 to Blank et al., column 6, lines 51-55).

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz in view of Christiano and Wong, and further in view of U.S. Patent Application Publication No. 2002/0023260 to Isman.

As noted above Barritz in combination with Christiano and Wong teaches all of the features of the claimed invention except for basing the correlation between capacity data and software usage on statistical analysis.

Isman teaches a method for analyzing the capacity of parallel processing systems by evaluating the performance of an application executing on a parallel processing system based on assumed data set sizes and variations of the architecture of the system (0011). Isman teaches implementing this method by

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creating a graph and a corresponding file that describes the application on the parallel processing system and using, in conjunction with the processing speeds of the system components, the flow of data, and the size and counts of data records throughout the system, determine equations for the amount of time required for each component (0012). Isman also teaches representing the execution of a particular application with the graph (0028), and details about the parallel processing system such as processing rate in MB/sec (0032), obtained through monitoring of the software (0029), that are created in the table file to calculate the processing and execution times (0034), time based capacity data (0060), and statistical data over time (0063 and 0064) that can be used to monitor the execution of the application on the system and providing this information to a user (0054 and Figure 5).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz, Christiano, and Wong to include basing the correlation between capacity data and software usage on statistical analysis, as taught by Isman, because, as suggested by Isman, the combination would have provided a method for analyzing the performance of an application executing on a system by taking into account all the factors that effect the execution of the application over time using statistical trends in order to obtain accurate results (0009).

4. Claims 9, 10, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz in view of Christiano and Wong, and further in view of U.S. Patent No. 4,937,863 to Robert et al.



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As noted above, Barritz in combination with Christiano and Wong teaches many of the features of the claimed including determining capacity data based on CPU speed, but do not teach accessing a knowledge base and deriving from it information to compute the computer capacity data.

Robert teaches a software licensing management system that determines if the usage of the licensed program is permitted under usage limitations stored in a table format (column 4, lines 11-19) as well as allowing the digital data processing system to control use of a licensed program based on criteria stored in a license data base (i.e. knowledge base) for providing pricing based on a per processor method rather than all of the processors (column 5, line 63 to column 6, line 8). Robert also teaches that the data base comprises a number of fields including producer name, vendor name, and processor power (column 6, lines 15-21 and 41-47) and uses this processor power data, with or without data that relates to the number of users, to adjust the usage data of the program (column 6, lines 47-60).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz, Christiano, and Wong to include accessing a knowledge base and deriving from it information to compute the computer capacity data, as taught by Robert, because Barritz in combination with Christiano and Wong does teach determining capacity data based upon parameters specific to a particular system and, as suggested by Robert, the combination would have provided a method for storing such parameters/data that is used to determine the usage data of the license

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in a form that allows easy access by the means for determining the capacity data (column 1, lines 58-63 and column 2, lines 11-20).

Also, since the invention of Barritz, Christiano, and Wong does disclose supplementing the knowledge base with user supplied information (Barritz, column 11, lines 16-25) it would have been obvious to one having ordinary skill in the art to do so by accessing the knowledge base via an application program interface because it would have provided a user-friendly method of providing the necessary information without requiring programming changes, as is well-known in the art (see for example U.S. Patent No. 6,477,520 to Malaviya et al., column 6, lines 1-3 and U.S. Patent Application Publication No. 2001/0025304 to Keith, Jr., 0104).

5. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz in view of Christiano and Wong and further in view of U.S. Patent No. 5,864,620 to Pettitt.

As noted above, Barritz in combination with Christiano and Wong teaches all the features of the claimed invention including distributing software to users based on license information (Christiano, column 3, lines 47-54) but do not teach specifying that the output information be sent to a computing facility that comprises a central clearing house.

Pettitt teaches a method and system for controlling distribution of software in a multi-tiered distribution chain comprising a software author, one or more distributors, one or more optional resellers, an end user, and a license clearing house (column 3,

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lines 27-36) that performs a validation step to produce a code that indicates whether or not a valid software distribution transaction is authorized (column 4, lines 52-62).

It would have been obvious to one having ordinary skill in the art to modify the invention of Barritz, Christiano, and Wong to include specifying that the output information be sent to a computing facility that comprises a central clearing house, as taught by Pettitt, because, as suggested by Pettitt, the combination of Barritz, Christiano, and Wong does teach sending output reports to various locations for further analysis (Barritz, column 9, lines 34-47) and the combination would have provided a method for allowing the distributor of the software to distinguish authorized users from unauthorized users in order to determine proper payment schedules (column 3, lines 13-26).

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

U.S. Patent No. 6,496,823 to Blank et al. teaches a method for apportioning a work unit to execute in parallel in a heterogeneous environment including a plurality

of processor and the total system processing capability (i.e. processing power) is based upon the number of processors.

U.S. Patent No. 6,477,520 to Malaviya et al. teaches an adaptive travel purchasing optimization system including a knowledge base accessible via an application program interface.

U.S. Patent Application Publication No. 2001/0025304 to Keith, Jr. teaches a method and apparatus for applying a parametric search methodology to a directory tree database format including a knowledge base accessible via an application program interface.

U.S. Patent No. 6,055,492 to Alexander, III et al. teaches a system and method for program event tracing on a variety of hardware platforms, including parallel processors (column 3, lines 28-33), by obtaining dynamic processing data, such as the statistical amount of time spent performing a particular processing function (column 4, lines 44-58), and associated time stamps (column 4, lines 17-25), which are stored along with related identification information in an index (column 7, lines 52-65 and Figure 8).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. West whose telephone number is (703)308-1309. The examiner can normally be reached on Monday through Friday, 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (703)308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7382 for regular communications and (703)308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

jrw  
December 5, 2003

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800